

By: Hegar

S.B. No. 1811

A BILL TO BE ENTITLED

AN ACT

relating to the Fort Bend Subsidence District.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sec. 8834.001, Special District Local Laws Code, is amended to read as follows:

DEFINITIONS. In this chapter:

(1) "Agricultural crop":

(A) means food or fiber commodities that are grown for resale or commercial purposes and that are to be used for food, clothing, or animal feed; and

(B) includes nursery products and florist items that are in the possession of a nursery grower.

(2) "Alternative water supply" means any water source other than groundwater withdrawn within the district, and may include any water supplied through an approved groundwater reduction plan.

(3) "Beneficial use" means any use that is useful or beneficial to the user, including:

(A) an agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational use, or a use for pleasure purposes; or

(B) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals.

(4[2]) "Board" means the district's board of

1 directors.

2 (5[3]) "Commission" means the Texas Commission on
3 Environmental Quality.

4 (6[4]) "District" means the Fort Bend Subsidence
5 District.

6 (7) "Florist item" means a cut flower, potted plant,
7 blooming plant, inside foliage plant, bedding plant, corsage
8 flower, cut foliage, floral decoration, or live decorative
9 material.

10 (8[5]) "Groundwater" means water existing below the
11 earth's surface in the district. The term does not include water
12 produced with oil in the production of oil and gas.

13 (9) "Nursery grower" means a person who grows in any
14 medium more than 50 percent of the nursery products or florist items
15 that the person sells or leases. A person grows a nursery product
16 or florist item if the person cultivates or propagates the product
17 or item by engaging in activities associated with the production or
18 multiplying of stock, including the development of new plants from
19 cuttings, grafts, plugs, or seedlings. The term does not include a
20 person who merely holds or maintains a nursery product or florist
21 item before sale or lease.

22 (10) "Nursery product" includes a tree, shrub, vine,
23 cutting, graft, scion, grass, bulb, or bud that is grown or kept
24 for, or capable of, propagation and distribution for sale or lease.

25 (11[6]) "Regional water supplier" means a political
26 subdivision of the State of Texas with the authority to conserve,
27 store, transport, treat, purify, distribute, sell, and deliver

1 water to persons, corporations, municipal corporations, political
2 subdivisions of the state and others, either by statutory
3 authorization or contract, and has an approved groundwater
4 reduction plan.

5 (12) "Subsidence" means the lowering in elevation of
6 the surface of land by groundwater withdrawal.

7 (13[7]) "Waste" means:

8 (A) groundwater withdrawal from a groundwater
9 reservoir at a rate and in an amount that causes or threatens to
10 cause intrusion into the reservoir of water unsuitable for
11 agricultural, gardening, domestic, or stock raising purposes;

12 (B) groundwater withdrawal from a groundwater
13 reservoir through a well if the water withdrawn is not used for a
14 beneficial use or if the amount used is more than is reasonably
15 required for a beneficial use;

16 (C) escape of groundwater from a groundwater
17 reservoir to any other reservoir or geologic strata that does not
18 contain groundwater;

19 (D) pollution or harmful alteration of
20 groundwater in a groundwater reservoir by saltwater or other
21 harmful matter admitted from another stratum or from the surface of
22 the ground;

23 (E) unless the discharge is authorized by a
24 permit, rule, or order issued by the commission under Chapter 26,
25 Water Code, wilfully or negligently causing, suffering, or allowing
26 groundwater to escape or flow:

27 (i) into a river, creek, natural

1 watercourse, depression, lake, reservoir, drain, sewer, street,
2 highway, road, or road ditch; or

3 (ii) onto land that does not belong to the
4 owner of the well;

5 (F) unless the occupant of the land receiving the
6 discharge granted permission for the discharge, the escape of
7 groundwater pumped for irrigation as irrigation tailwater onto land
8 that does not belong to the owner of the well; or

9 (G) wilfully causing or knowingly permitting the
10 water withdrawn from an artesian well to run off the owner's land or
11 to percolate through the stratum above which the water is found, as
12 prescribed by Section 11.205, Water Code.

13 (14) "Water conservation" means a measure that seeks
14 to make a water supply available for alternative or future use. The
15 term includes best management practices, improved efficiency or
16 accountability, recycling, reuse, pollution prevention, and
17 reduction in consumption, loss, or waste.

18 (15[8]) "Well" means a facility, device, or method
19 used to withdraw groundwater.

20 (16) "Well owner" means a person who has an ownership
21 interest in a well, operates a well, owns land on which a well is
22 located, or owns the water withdrawn or to be withdrawn from a well.

23 (17[9]) "Withdrawal" means the act of extracting by
24 pumping or another method.

25 SECTION 2. Sec. 8834.006, Special District Local Laws Code,
26 is amended to read as follows:

27 Sec. 8834.006. CERTAIN OTHER STATUTES INAPPLICABLE. (a)

1 Other laws governing the administration or operation of a
2 conservation and reclamation district created under Section 52,
3 Article III, or Section 59, Article XVI, Texas Constitution,
4 including Chapters 36 and 49, Water Code, do not apply to the
5 district.

6 (b) Notwithstanding Section 36.052, Water Code, this
7 chapter prevails over any other law in conflict or inconsistent
8 with this chapter.

9 SECTION 3. Sec. 8834.055, Special District Local Laws Code,
10 is amended to read as follows:

11 Sec. 8834.055. OFFICERS. (a) Each year, at the first
12 meeting after the new directors take office, the directors shall
13 select a chairman [~~president~~], a vice chairman [~~president~~], and a
14 secretary.

15 (b) An officer selected under Subsection (a) serves at the
16 will of the board and may be removed and replaced by a majority of
17 the board at any time.

18 (c) The chairman [~~president~~] shall preside over meetings of
19 the board. If the chairman [~~president~~] is not present, the vice
20 chairman [~~president~~] shall preside.

21 (d) The secretary shall ensure that all records and books of
22 the district are properly kept and attest to the chair's signature
23 on all documents. The board may authorize another director, the
24 general manager, or any employee or contractor to execute documents
25 on behalf of the district and to certify the authenticity of any
26 record of the district.

27 SECTION 4. Sec. 8834.056, Special District Local Laws Code,

is amended to read as follows:

(a) The board shall hold ~~[one]~~ regular ~~[meeting each month]~~ meetings at a time set by the board.

(b) The board may hold a special meeting at the call of the chairman ~~[president]~~ or on the written request of at least three directors.

(c) A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any district business. Any member that abstains from voting on a particular matter does not count as part of the membership for the purposes of that vote, and a majority of the remaining membership is sufficient for transacting any district business.

SECTION 5. Sec. 8834.057(b), Special District Local Laws Code, is amended to read as follows:

(b) A meeting of a committee of the board is not subject to Chapter 551, Government Code, if less than a quorum of the board is present at the meeting.

SECTION 6. Sec. 8834.104(a), Special District Local Laws Code, is amended to read as follows:

(a) The ~~[Before March 31 of each year, the]~~ board shall hold an annual ~~[a]~~ hearing to determine the effects during the preceding calendar year of groundwater withdrawal on subsidence in the district.

SECTION 7. Sec. 8834.115, Special District Local Laws Code, is amended to read as follows:

Sec. 8834.115. NOTICE OF HEARINGS. (a) Not later than the

1 10th day before the date set for a hearing other than a permit
2 application hearing, the district shall deliver or mail notice of
3 the hearing to:

4 (1) each county, regional water supplier and municipal
5 government in the district; and

6 (2) each person that the board considers to have an
7 interest in the subject matter of the hearing.

8 (b) Not later than the 10th day before the date set for a
9 hearing, the district shall:

10 (1) publish notice of the hearing once in a newspaper
11 of general circulation in each county in the district; and

12 (2) provide a copy of the [post] notice of the hearing
13 to the county clerk to be posted at the county courthouse of each
14 county in the district in the place where notices are usually
15 posted.

16 SECTION 8. Chapter 8834, Subchapter D, Special District
17 Local Laws Code, is amended by adding Section 8834.158 to read as
18 follows:

19 Sec. 8834.158. INVESTMENT OFFICER. (a) Notwithstanding
20 Section 2256.005(f), Government Code, the board may contract with a
21 person to act as investment officer of the district.

22 (b) The investment officer of a district shall:

23 (1) not later than the first anniversary of the date
24 the officer takes office or assumes the officer's duties, attend a
25 training session of at least six hours of instruction relating to
26 investment responsibilities under Chapter 2256, Government Code;
27 and

1 (2) attend at least four hours of additional
2 investment training within each two-year period after the first
3 year.

4 (c) Training under this section must be from an independent
5 source approved by:

6 (1) the board; or

7 (2) a designated investment committee advising the
8 investment officer.

9 (d) Training under this section must include education in
10 investment controls, security risks, strategy risks, market risks,
11 diversification of investment portfolio, and compliance with
12 Chapter 2256, Government Code.

13 SECTION 9. Sec. 8834.201, Special District Local Laws Code,
14 is amended to read as follows:

15 Sec. 8834.201. GROUNDWATER WITHDRAWALS SUBJECT TO BOARD
16 RULE. (a) Groundwater withdrawals governed by this chapter,
17 including withdrawals of injected water, are subject to reasonable
18 board rules and orders.

19 (b) The Board may issue permits to drill new wells and may,
20 by rule, provide exemptions from the permit requirements. The
21 district shall grant a permit to drill and operate a new well inside
22 a platted subdivision if water service from a retail public utility
23 is not available to the lot where the well is to be located.

24 (c) In this section term "retail public utility" has the
25 same meaning as Section 13.002, Water Code.

26 SECTION 10. Sec. 8834.202, Special District Local Laws
27 Code, is amended to read as follows:

1 Sec. 8834.202. CERTAIN GROUNDWATER USES [~~WELLS~~] EXEMPT.
2 The permit requirements of this [~~This~~] chapter do [~~does~~] not apply
3 to:

4 (1) a well regulated under Chapter 27, Water Code;

5 (2) a well that:

6 (A) has a casing with an inside diameter of not
7 more than five inches; and

8 (B) serves only a single-family dwelling; or

9 (3) a shallow well that:

10 (A) is not used to provide water for:

11 (i) human consumption;

12 (ii) agriculture;

13 (iii) manufacturing or industry; or

14 (iv) water injection; and

15 (B) withdraws water solely:

16 (i) to prevent hazardous sand boils,
17 dewater surface construction sites, or relieve hydrostatic uplift
18 on permanent structures;

19 (ii) for groundwater quality analysis and
20 for monitoring migration of subsurface contaminants or pollution;
21 or

22 (iii) for recovery of contamination or
23 pollution.

24 SECTION 11. Sec. 8834.206 (a) and (c), Special District
25 Local Laws Code, are amended to read as follows:

26 (a) A well [~~The~~] owner of a well located in the district must
27 obtain a permit from the board before:

(1) drilling, equipping, or completing the well;

(2) substantially altering the size of the well or a well pump; or

(3) operating the well.

(c) A well ~~[An]~~ owner ~~[or operator]~~ commits a violation if the well owner ~~[or operator]~~ does not obtain a permit as required by Subsection (a). A violation occurs on the first day the drilling, equipping, completing, altering, or operation begins. Each day that a violation continues is a separate violation.

SECTION 12. Sec. 8834.209(c), Special District Local Laws Code, is amended to read as follows:

(c) The board shall issue a permit to an applicant if the board finds on sufficient evidence that:

(1) there is no other adequate and available substitute or supplemental source of alternative ~~[surface]~~ water supplies at prices competitive with the prices charged by suppliers of alternative ~~[surface]~~ water supplies in the district; and

(2) compliance with any provision of this chapter or any district rule will result in an arbitrary taking of property or in the practical closing and elimination of any lawful business, occupation, or activity without sufficient corresponding benefit or advantage to the public.

SECTION 13. Sec. 8834.214, Special District Local Laws Code, is amended to read as follows:

Sec. 8834.214. ANNUAL REPORT. (a) Before January 31 each year, a well owner who is required to hold ~~[holds]~~ a permit under this chapter shall submit to the board a report stating:

1 (1) the well owner's name;

2 (2) the location of the well;

3 (3) the total amount of groundwater withdrawn from the
4 well during the preceding calendar year [~~12-month period~~];

5 (4) the total amount of groundwater withdrawn from the
6 well during each month of the preceding calendar year [~~12-month~~
7 ~~period~~];

8 (5) the purpose for which the groundwater was used;

9 and

10 (6) any other information required by the board that
11 the board considers necessary for the board to control and prevent
12 subsidence in the district.

13 (b) For the purposes of this section, a well owner whose
14 well is aggregated with other wells permitted and managed by a
15 regional water supplier is required to file the report with the
16 regional water supplier instead of the district. Regional water
17 suppliers are required to submit to the board the report required in
18 subsection (a) for all wells owned, managed or permitted by that
19 supplier no later than March 31 each year.

20 SECTION 14. EFFECTIVE DATE. This Act takes effect
21 immediately if it receives a vote of two-thirds of all the members
22 elected to each house, as provided by Section 39, Article III, Texas
23 Constitution. If this Act does not receive the vote necessary for
24 immediate effect, this Act takes effect on September 1, 2011.